

July 08, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY: vl
DEPUTY

****IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF TEXAS AUSTIN DIVISION****

****ELIAS JOSEPH KARAM, § Plaintiff, §****

****v. § C.A. NO. SA-24-CV-00720-OLG-ESC §****

****META PLATFORMS, INC., § Defendant. §****

****PLAINTIFF'S RESPONSE TO DEFENDANT META PLATFORMS, INC.'S RULE
12 MOTION TO DISMISS****

Plaintiff Elias Joseph Karam ("Plaintiff"), proceeding pro se, respectfully submits this response in opposition to Defendant Meta Platforms, Inc.'s ("Meta") Rule 12 Motion to Dismiss. For the reasons set forth below, Meta's motion should be denied in its entirety.

****I. INTRODUCTION****

Plaintiff Elias Joseph Karam initiated this lawsuit against Meta Platforms, Inc. due to the detrimental impact of Meta's actions on his business and personal well-being. Meta's operations, specifically its advertising platform, have directly harmed Plaintiff's business interests in Texas, leading to significant financial and reputational damage. Despite Meta's attempt to dismiss the case, Plaintiff has sufficiently demonstrated that this Court has both personal jurisdiction over Meta and that Texas is the proper venue for this litigation. Furthermore, Plaintiff's claims are sufficiently detailed and legally valid, warranting a thorough examination in court.

****II. ARGUMENT****

****A. The Court Has Personal Jurisdiction Over Meta****

Meta contends that this Court lacks personal jurisdiction over it, arguing that it is a Delaware corporation with its principal place of business in California. However, this argument overlooks Meta's extensive and systematic activities within Texas.

i. **Legal Standard**

The burden of establishing personal jurisdiction lies with the Plaintiff. Under the Due Process Clause, personal jurisdiction over a non-resident defendant is proper if the defendant has "minimum contacts" with the forum state such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice"

(*International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

ii. ****Analysis****

a. ****General Jurisdiction****

General jurisdiction exists when a corporation's affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state (*Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)). Meta's presence in Texas is significant, with operations that include maintaining an office in Austin. This office is involved in key business activities that directly target Texas residents, demonstrating Meta's substantial presence and continuous activities in Texas. For instance, Meta has conducted numerous business dealings within the state, providing services and engaging in transactions that form a substantial connection with Texas.

In the landmark case of *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the Supreme Court found that the exercise of general jurisdiction was proper where the corporation conducted continuous and systematic activities within the forum state. Similarly, Meta's extensive operations in Texas satisfy this requirement, establishing the Court's general jurisdiction over Meta.

b. ****Specific Jurisdiction****

Specific jurisdiction is appropriate when the defendant's forum-related activities give rise to the plaintiff's claims. Plaintiff's claims arise directly from Meta's business activities in Texas, including the targeted operation of its advertising platform. Meta's argument that the mere availability of its website in Texas is insufficient fails to recognize the specific targeting and substantial interaction Meta has with Texas residents through its advertising services.

In the case of *Calder v. Jones*, 465 U.S. 783 (1984), the Supreme Court held that specific jurisdiction was proper where the defendant's intentional conduct was expressly aimed at the forum state and caused harm that the defendant knew would likely be suffered in the forum state. Meta's actions, including the targeted advertisements and the specific harm caused to Plaintiff's business in Texas, align with this precedent, thereby establishing specific jurisdiction.

Further supporting this notion is the case of *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), where the Supreme Court found that a single contract with a resident of the forum state was sufficient to establish jurisdiction because the contract had a substantial connection to the state. Here, Meta's extensive interactions and business dealings with Texas residents, particularly those impacting Plaintiff, establish

the substantial connection required for specific jurisdiction.

****B. The Arbitration Clause is Unenforceable****

Meta seeks to enforce an arbitration clause to compel arbitration of Plaintiff's claims. However, this clause is unenforceable for several reasons:

i. ****Legal Standard****

Arbitration agreements, while generally enforceable under the Federal Arbitration Act, must be entered into knowingly and voluntarily. They must also be fair and not unconscionable (*AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)).

ii. ****Analysis****

Plaintiff did not knowingly or voluntarily consent to the arbitration clause as Meta failed to reasonably communicate its terms. The arbitration clause is buried in Meta's terms of service, making it difficult for a typical user to understand and acknowledge. Moreover, enforcing this clause would be unconscionable and against public policy, as it would effectively deprive Plaintiff of a reasonable forum to resolve his disputes.

In *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996), the Supreme Court emphasized that arbitration agreements must be clearly communicated and cannot be hidden in fine print. Meta's arbitration clause fails this standard, as it was not clearly communicated to Plaintiff. Furthermore, the clause is procedurally and substantively unconscionable, given the disparity in bargaining power between Meta and Plaintiff, and the oppressive nature of the terms.

Moreover, in the case of *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010), the Court held that arbitration agreements may be invalidated based on general contract defenses such as unconscionability, if the court determines that the agreement was unfairly one-sided. Meta's arbitration clause, which forces users into arbitration without clear and mutual agreement, falls into this category.

****C. Texas is the Proper Venue****

Meta contends that Texas is not the proper venue for this case. However, this contention is without merit.

i. ****Legal Standard****

Under 28 U.S.C. § 1391, venue is proper in a judicial district where a substantial part of

the events or omissions giving rise to the claim occurred.

ii. ****Analysis****

Plaintiff's business is based in Texas, and the harm caused by Meta's actions occurred in Texas. The substantial part of the events giving rise to Plaintiff's claims, including the financial and reputational damage to Plaintiff's business, took place in Texas. Therefore, Texas is the proper venue for this litigation.

In the case of *Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979), the Supreme Court held that venue is proper where the events giving rise to the claim occurred. Given that the adverse effects of Meta's actions were felt by Plaintiff in Texas, this state is the appropriate venue for this case.

Furthermore, in *Atlantic Marine Construction Co. v. United States District Court*, 571 U.S. 49 (2013), the Supreme Court emphasized that venue is proper in the district where the defendant resides or where a substantial part of the events or omissions giving rise to the claim occurred. Plaintiff's business operations and the harm caused by Meta's actions occurred in Texas, justifying venue in this state.

****D. Plaintiff's Claims are Sufficiently Pled****

Meta argues that Plaintiff's claims are inadequately pled and should be dismissed. However, this argument fails as Plaintiff has provided sufficient factual details to support each of his claims.

i. ****Legal Standard****

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face (*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

ii. ****Analysis****

Plaintiff's complaint meets the *Twombly* standard by providing detailed factual allegations that support his claims. It was provided in district court at the Bexar county, before being referred to federal court

****1. Advertisement Misrepresentation****

Plaintiff alleges that Meta misrepresented the reach and effectiveness of its advertising services. Specifically, Meta's advertising platform was presented as a tool that would

significantly enhance the visibility and reach of Plaintiff's real estate business. Relying on these representations, Plaintiff invested substantial amounts in Meta's advertising services. However, the actual performance of these advertisements was significantly below the promised standards, leading to financial losses and business setbacks. Plaintiff has provided detailed instances of these misrepresentations and the resultant harm.

In the case of *Novell, Inc. v. Microsoft Corp.*, 505 F.3d 302 (4th Cir. 2007), the court recognized that misrepresentations in advertising could form the basis of a claim if the plaintiff relied on those representations to their detriment. Plaintiff's allegations mirror this scenario, as he relied on Meta's false promises, resulting in significant financial harm.

Additionally, in the case of *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), the Supreme Court held that fraud claims require specific allegations of false representations and reliance by the plaintiff. Plaintiff's detailed allegations meet these requirements, supporting his fraud claim.

****2. Defamation****

Plaintiff has adequately pled the elements of defamation. Meta, through its platform, made false statements that harmed Plaintiff's reputation. These statements were made to third parties and had a detrimental

impact on Plaintiff's professional standing. The allegations include specific instances where Meta's actions and statements directly harmed Plaintiff's business reputation.

In *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the Supreme Court outlined the standards for defamation, emphasizing that false statements causing reputational harm are actionable. Plaintiff's complaint details how Meta's actions meet these criteria, causing significant reputational damage.

Further, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), the Court held that private individuals need only prove negligence to prevail in a defamation claim. Plaintiff's allegations of Meta's negligent dissemination of false information support his defamation claim.

****3. Deceptive Trade Practices****

Plaintiff has identified specific deceptive acts by Meta that constitute violations of the Texas Deceptive Trade Practices Act (DTPA). Meta's conduct, including misrepresentations about its advertising services and the unjustified banning of Plaintiff's accounts, falls squarely within the prohibited practices under the DTPA.

Plaintiff has detailed how these deceptive practices caused significant financial and reputational harm.

In the case of *State of Texas v. American Blastfax, Inc.*, 121 F. Supp. 2d 1085 (W.D. Tex. 2000), the court held that deceptive trade practices, particularly those involving false advertising, are actionable under the DTPA. Plaintiff's claims align with this precedent, highlighting Meta's deceptive conduct.

Moreover, in *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472 (Tex. 1995), the Texas Supreme Court held that any deceptive act or practice that misleads consumers is actionable under the DTPA. Meta's misleading advertisements and business practices fit this description.

****4. Fraud****

Plaintiff alleges that Meta engaged in fraudulent conduct by knowingly making false representations about the effectiveness of its advertising services. Plaintiff relied on these representations to his detriment, investing significant resources in Meta's platform. The complaint outlines the fraudulent nature of Meta's conduct and the resultant harm to Plaintiff.

In the case of *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), the Supreme Court held that fraud claims require specific allegations of false representations and reliance by the plaintiff. Plaintiff's detailed allegations meet these requirements, supporting his fraud claim.

Additionally, in *Ernst & Young, LLP v. Pacific Mutual Life Insurance Co.*, 51 S.W.3d 573 (Tex. 2001), the Texas Supreme Court held that fraud claims require proof of a material misrepresentation, reliance, and resultant harm. Plaintiff's allegations satisfy these elements.

****5. Fair Housing Violations****

Plaintiff has sufficiently pled that Meta's actions violated both federal and Texas fair housing laws. Meta's discriminatory practices, including the selective banning of Plaintiff's accounts, hindered Plaintiff's real estate business operations. These actions constitute violations of fair housing laws, as they unfairly targeted Plaintiff's business based on discriminatory criteria.

In *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), the Supreme Court upheld the principle that discriminatory practices in housing, even if not overtly discriminatory, are actionable under fair housing

laws. Plaintiff's allegations of discriminatory banning practices by Meta align with this precedent.

Further, in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), the Court held that individuals who suffer direct harm from discriminatory practices have standing to sue under the Fair Housing Act. Plaintiff's direct harm from Meta's discriminatory practices supports his fair housing claims.

****E. Response to Meta's Contradictions and Precedents****

Meta's motion to dismiss is rife with contradictions and unsupported assertions. Here, we address these contradictions and support our position with relevant legal precedents:

1. ****Notice of Removal****: Meta's Notice of Removal acknowledges the substantial nature of Plaintiff's claims by removing the case to federal court under the basis of diversity jurisdiction, citing an amount in controversy exceeding \$75,000. This acknowledgment underscores the seriousness and validity of Plaintiff's claims. A few days later they pivot and say these claims are not cognizable in contradiction.
2. ****Civil Cover Sheet****: Meta's Civil Cover Sheet identifies the nature of Plaintiff's claims, including shadow banning, advertisement misrepresentation, deceptive trade practices, fraud, and violations of fair housing laws. This document further validates the specific and substantial nature of Plaintiff's allegations

****Legal Precedents****:

- ****Burger King Corp. v. Rudzewicz**, 471 U.S. 462 (1985)**: This precedent supports the exercise of personal jurisdiction over out-of-state defendants who have established substantial and continuous contacts with the forum state. Meta's significant business activities in Texas, including maintaining an office and targeting Texas residents through its advertising platform, meet this standard.
- ****Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.**, 526 U.S. 344 (1999)**: This case clarifies that the 30-day removal period begins upon proper service. Meta acknowledges that proper service occurred on May 31, 2024, making the removal timely under 28 U.S.C. § 1446(b)(1). However, in fact service was done electronically on the facebook support website and through email to legal@facebook.com or similar during March.

These precedents establish that Meta's activities and the resultant harm in Texas justify the court's jurisdiction and the validity of Plaintiff's claims.

****III. DETAILED LEGAL ANALYSIS AND PRECEDENTS SUPPORTING PLAINTIFF'S CLAIMS****

A comprehensive legal analysis is required to fully appreciate the validity and strength of Plaintiff's claims. Below, we delve deeper into each claim, supported by relevant legal precedents:

****A. General and Specific Jurisdiction Over Meta****

In addition to the previously mentioned cases, several other precedents further strengthen the argument for personal jurisdiction over Meta:

1. ****International Shoe Co. v. Washington, 326 U.S. 310 (1945)****: This landmark case established the "minimum contacts" standard for personal jurisdiction. The Court held that personal jurisdiction is appropriate when a corporation has sufficient contacts with the forum state, making it reasonable to expect the corporation to defend a lawsuit there. Meta's extensive business activities in Texas, including advertising and other services, meet this standard.
2. ****Hanson v. Denckla, 357 U.S. 235 (1958)****: This case emphasized that the defendant's activities must be purposefully directed toward the forum state. Meta's targeted advertising and business operations in Texas demonstrate purposeful availment, justifying the Court's jurisdiction.
3. ****Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984)****: The Supreme Court held that personal jurisdiction is appropriate when a defendant's conduct has a substantial connection with the forum state. Meta's continuous interactions and business dealings in Texas establish such a connection.

****B. Arbitration Clause Analysis****

The enforceability of arbitration clauses has been a subject of extensive judicial scrutiny. Key cases that support Plaintiff's position include:

1. ****Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996)****: The Supreme Court held that arbitration agreements must be clear and prominently disclosed to be enforceable. Meta's arbitration clause, buried in fine print, fails this standard.
2. ****AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011)****: While upholding the general enforceability of arbitration agreements, the Court emphasized that such agreements must not be unconscionable. The imbalance in bargaining power and the oppressive nature of Meta's arbitration clause render it unconscionable.

3. **American Express Co. v. Italian Colors Restaurant**, 570 U.S. 228 (2013): The Court held that arbitration agreements must allow for the effective vindication of statutory rights. Meta's arbitration clause, by effectively barring Plaintiff from pursuing his claims in a reasonable forum, violates this principle.

C. Venue Appropriateness

Several cases support the appropriateness of Texas as the venue for this litigation:

1. **Leroy v. Great Western United Corp.**, 443 U.S. 173 (1979): The Supreme Court held that venue is proper where the events giving rise to the claim occurred. Plaintiff's business operations and the harm caused by Meta's actions occurred in Texas, making it the appropriate venue.

2. **Bates v. C&S Adjusters, Inc.**, 980 F.2d 865 (2d Cir. 1992): The court held that venue is appropriate in the district where the plaintiff resides and where the harm was felt. Plaintiff resides in Texas, and the harm caused by Meta's actions was felt in Texas, justifying venue in this state.

D. Detailed Analysis of Plaintiff's Claims

Each of Plaintiff's claims is grounded in well-established legal principles and supported by relevant precedents:

1. Advertisement Misrepresentation

Meta's misrepresentation of its advertising services constitutes a clear violation of established legal standards:

1. **Novell, Inc. v. Microsoft Corp.**, 505 F.3d 302 (4th Cir. 2007): The court recognized that misrepresentations in advertising could form the basis of a claim if the plaintiff relied on those representations to their detriment. Plaintiff's reliance on Meta's false promises, resulting in significant financial harm, aligns with this precedent.

2. **Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.**, 425 U.S. 748 (1976): The Supreme Court held that false advertising is not protected speech and is subject to regulation. Meta's false advertising claims fall under this principle, supporting Plaintiff's claim.

2. Defamation

Plaintiff's defamation claim is supported by several key precedents:

1. **New York Times Co. v. Sullivan**, 376 U.S. 254 (1964)

): The Supreme Court outlined the standards for defamation, emphasizing that false statements causing reputational harm are actionable. Plaintiff's complaint details how Meta's actions meet these criteria, causing significant reputational damage.

2. **Gertz v. Robert Welch, Inc.**, 418 U.S. 323 (1974): The Court held that private individuals need only prove negligence to prevail in a defamation claim. Plaintiff's allegations of Meta's negligent dissemination of false information support his defamation claim.

3. Deceptive Trade Practices

Meta's deceptive conduct violates the Texas Deceptive Trade Practices Act (DTPA):

1. **State of Texas v. American Blastfax, Inc.**, 121 F. Supp. 2d 1085 (W.D. Tex. 2000): The court held that deceptive trade practices, particularly those involving false advertising, are actionable under the DTPA. Plaintiff's claims align with this precedent, highlighting Meta's deceptive conduct.

2. **Doe v. Boys Clubs of Greater Dallas, Inc.**, 907 S.W.2d 472 (Tex. 1995): The Texas Supreme Court held that any deceptive act or practice that misleads consumers is actionable under the DTPA. Meta's misleading advertisements and business practices fit this description.

4. Fraud

Plaintiff's fraud claim is supported by key legal principles:

1. **Dura Pharmaceuticals, Inc. v. Broudo**, 544 U.S. 336 (2005): The Supreme Court held that fraud claims require specific allegations of false representations and reliance by the plaintiff. Plaintiff's detailed allegations meet these requirements, supporting his fraud claim.

2. **Ernst & Young, LLP v. Pacific Mutual Life Insurance Co.**, 51 S.W.3d 573 (Tex. 2001): The Texas Supreme Court held that fraud claims require proof of a material misrepresentation, reliance, and resultant harm. Plaintiff's allegations satisfy these elements.

5. Fair Housing Violations

Meta's discriminatory practices violate federal and Texas fair housing laws:

1. **Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.**, 576 U.S. 519 (2015): The Supreme Court upheld the principle that discriminatory practices in housing, even if not overtly discriminatory, are actionable under fair housing laws. Plaintiff's allegations of discriminatory banning practices by Meta align with this precedent.
2. **Trafficante v. Metropolitan Life Insurance Co.**, 409 U.S. 205 (1972): The Court held that individuals who suffer direct harm from discriminatory practices have standing to sue under the Fair Housing Act. Plaintiff's direct harm from Meta's discriminatory practices supports his fair housing claims.

IV. RESPONSE TO META'S MOTION TO DISMISS

Meta's motion to dismiss relies on several flawed arguments and unsupported assertions. Below, we address each of Meta's contentions and demonstrate why they lack merit:

A. Personal Jurisdiction

Meta argues that the Court lacks personal jurisdiction over it. However, as detailed above, Meta's extensive business activities in Texas, including maintaining an office and targeting Texas residents through its advertising platform, establish both general and specific jurisdiction. Meta's reliance on cases such as *Daimler AG v. Bauman*, 571 U.S. 117 (2014), is misplaced, as that case involved significantly different facts and did not address the targeted business activities present here.

B. Arbitration Clause

Meta contends that the arbitration clause in its terms of service is enforceable. However, as outlined above, the arbitration clause was not clearly communicated to Plaintiff, rendering it unenforceable under *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996). Additionally, the clause is unconscionable and violates public policy, as it effectively deprives Plaintiff of a reasonable forum to resolve his disputes.

C. Venue

Meta argues that Texas is not the proper venue for this case. However, as detailed above, venue is appropriate where the events giving rise to the claim occurred (*Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979)). Plaintiff's business operations and the harm caused by Meta's actions occurred in Texas, making it the appropriate venue.

****D. Adequacy of Pleading****

Meta asserts that Plaintiff's claims are inadequately pled. However, as demonstrated above, Plaintiff has provided detailed factual allegations supporting each of his claims, meeting the Twombly standard (Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)). Meta's argument to the contrary lacks merit.

****V. CONCLUSION****

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Meta's Rule 12 Motion to Dismiss in its entirety and allow this case to proceed to discovery and trial.

****Respectfully submitted,****

****Elias Joseph Karam****

****259 Rockhill Dr.****

****San Antonio, TX 78209****

****Pro Se Plaintiff****

****CERTIFICATE OF SERVICE****

I hereby certify that I forwarded a copy of the foregoing document to all parties pursuant to the Federal Rules of Civil Procedure.

<i>Elias Joseph Karam</i>	dotloop verified 07/07/24 6:12 PM CDT INWN-EHZJ-Q42U-OZHI
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****Elias Joseph Karam****